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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1973

NO. 73-965

MORAN SHIPPING COMPANY AND SULPHUR CARRIERS CORPORATION,

Petitioners

versus

MAURO EVARISTO BLANCO,

Respondent

## REPLY ANSWER TO THE PETITION FOR WRIT OF CERTIORARI BY MAURO EVARISTO BLANCO

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---

Mauro Evaristo Blanco, respondent, prays that the U. S. Supreme Court for the United States refuse to issue a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit, for the following reasons:

## JURISDICTION

The jurisdiction of this Court is proper pursuant to Title 28, Section 1254, (1), U.S. C.A.

## QUESTION PRESENTED

The respondent, Mauro Evaristo Blanco, denies that the questions presented to this Court are as outlined in the petition for writ of certiorari of Moran Shipping Company and Sulphur Carriers Corporation. Instead, the respondent avers the only valid issue that was involved in the judgment of the district court was: "Is the release, printed in English, signed by a seaman, a complete bar to any further claim by this seaman, who does not read and write English?"

## CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The respondent, Mauro Evaristo Blanco, does not concur that the Fifth Amendment, to the United States Constitution, represents any issue involved in this matter. On the contrary, Mauro Evaristo Blanco submits the following statutes are involved:

(a) The Jones Act, 46 U. S. C. 688;

(b) Rule 38 of the Federal Rules of Civil Procedure;

(c) Rule 56 of the Federal Rules of Civil Procedure.

## STATEMENT OF THE CASE

Mauro Evaristo Blanco can agree with the statement of the case as announced by the petitioners, in some instances, but instead, the respondent avers these are the facts:

(1) The seaman, Mauro Evaristo Blanco, originally brought this action against the shipowner as a result of an accident of July 24, 1967, when employed as a solderer or welder

aboard the SS POCHTECA, a foreign vessel moored to the dock in Tampa, Florida. The vessel's chief engineer had ordered the seaman to loosen a valve at the same time the chief engineer was heating pipe that led to the same valve. Hot, liquid sulphur came through the valve in two streams, seriously burning the face, eyelids, conjunctiva and comea of the seaman. Members of the crew transported the seaman to the Tampa General Hospital, where he remained an inpatient from July 24, 1967 through August 8, 1967. Subsequent to discharge from the Tampa Hospital, Blanco traveled to Jacksonville, Florida, by bus, where he met the SS POCHTECA, which was in dry dock. While in Jacksonville, the shipowners arranged for a doctor, chosen by the shipowners, to give treatment and cure to Blanco for approximately thirty days. Then, when the SS POCHTECA was released from dry dock, medical treatment of the seaman stopped. The seaman remained on the vessel for one further trip from Jacksonville to Mexico and back to Jacksonville. Thereafter, the seaman returned to his home in Venezuela.

Apparently, some time prior to returning to Venezuela, the seaman had Mr. William C. Bostwick to represent him. However, this representation presented problems: Mr. Bostwick did not speak, read or write Spanish, and the seaman, Mr. Blanco, did not speak, read or write English. In representing the seaman, Mr. Bostwick in either October of 1967, as indicated at Page 8 of his deposition, or in October of 1968, as indicated on Page 9 of his deposition, negotiated a "settlement" of the seaman's case. But, apparently, as indicated in the deposition of Mr. William Bostwick at the bottom of Page 8/top of Page 9, and also at the bottom of Page 9/top of Page 10, of the deposition, depending upon whether the settlement negotiations by

Bostwick were commenced and concluded on October of 1967 or October of 1968, there presented difficulty between the lawyer and client. The client asked his lawyer for legal aid in Spanish. In any event, as per Page 7 of the deposition of Mr. Victor Raymos, he was associated by Mr. Bostwick and on September 9, 1968, he, Mr. Raymos, wrote a letter in Spanish to the seaman, Mr. Blanco, urging the seaman to accept $1,000.00 for injury. At Page 8 of his deposition, Mr. Raymos was of the opinion that the injuries of the seaman were "very mild and that it didn't show any serious injuries, and that it indicated that he was recovering very well, very nicely from his injuries." On October 8, 1968, the seaman replied in writing that he would accept $1,000.00 on the condition that the shipowner would be responsible for the plastic surgery of his face. Notwithstanding the revelation of needed plastic surgery on his face, the lawyer, Victor Raymos, and apparently the lawyer, William C. Bostwick, if he was consulted, continued to assume that the injuries of the seaman were "very mild, not serious, recovering very well, very nicely . . .". Mr. Raymos reiterated his recommendation that Blanco settle the case for $1,000.00 and requested that the seaman sign the bottom of his letter to indicate that he understood the full terms of the settlement agreement. The testimony of Mr. Raymos indicates that the bottom of the letter was signed and returned to him. Thereafter, a Red Ink Release, printed and written in English, was sent to Caracas, Venezuela, to the office of the Honorable Morris B. Bernbaum, the ambassador of the United States in Caracas, where apparently his office assisted in obtaining a release executed by the seaman. However, with reference to the execution of this release in Caracas, Venezuela, in the office of the ambassador, there is peculiar testimony

on the part of the defendant witness, Mr. Victor Raymos, at Page 12 of his deposition, which indicates:

> "I also enclosed a check made out to the attorney and Mr. Blanco, which Mr. Blanco should endorse on the back. So we sent these things to the ambassador, the American ambassador in Caracas, and then I received an answer back from the ambassador saying that Mr. Blanco had visited the embassy this morning, but he was not clear however that Mr. Blanco fully understands the significance of the release of all rights, although they were explained to him in Spanish."

Notwithstanding the absence of communication, Victor Raymos, sounding like an adversary, rather than counsel for the seaman, testified further on Page 12 of the deposition:

> "In order to avoid a misunderstanding at a later date it was suggested to Mr. Blanco that he bring his own translator to the embassy. So he promised to do that. So he did that.
>
> And on April the 9th, 1969 I got another letter from the embassy in Caracas and it said Mr. Blanco appeared at the embassy with his own interpreter, a fellow by the name of R-a-m-u-l-o M-o-e-l-l-e-r, and he found everything in order, but they needed $7.50 for the notarial fee.
>
> So we sent them the $7.50.
>
> Then finally on April 22nd I got a letter back from the embassy saying: I have your letter of April the

15th and the $7.50 to cover the consular notarial fee and I am enclosing the three releases of all rights forms completed and endorsed by Mr. Blanco and his interpreter, Mr. Moeller, as well as a $1,000.00 check endorsed by the claimant."

At the time of signing the release Blanco was in debt, owing the University Hospital in Caracas, Venezuela, for plastic surgery performed on his face January 8 through January 14, 1969. From July 24, 1967 through 1968 and 1969, Blanco was unable to work or secure employment because of poor vision and headaches. In 1970 Blanco did obtain employment as a street peddler in Caracas, earning enough money to eat, for less than earned as a seaman.

In 1971 a seaman complaint, pursuant to the Jones Act (46 U.S.C. 688) was filed in the U. S. District Court for the Middle District of Florida, Jacksonville Division, claiming damages as a result of negligence, unseaworthiness, failure to render prompt and proper medical treatment, maintenance and cure, transportation, earned and unearned wages. The shipowners filed an answer, admitting the jurisdiction of the Court, denying all allegations of fault. In the alternative, the shipowner alleged that the negligence of the plaintiff was the sole, proximate cause of his injuries, and as a sixth defense, the shipowners pleaded a release signed April 21, 1969.

A copy of the release was filed in the record, and this release clearly indicates that the same is written entirely in English, apparently written by three employees of the American embassy in Caracas, Venezuela and notarized by Betty Ann Hogander, consul of the United States of America. In furtherance of their defense, the shipowners filed a

motion for a summary judgment, submitting the depositions of William Bostwick and Victor Raymos in support of this summary judgment. Thereafter, the District Court rendered a judgment in behalf of the shipowners, dismissing the cause of the seaman. From that judgment, Blanco appealed to the Fifth Circuit Court of Appeals and was favored with a judgment of the appellate court vacating and remanding this matter back to the District Court as of August 20, 1973. Thereafter, in an en banc hearing, the Fifth Circuit Court of Appeals denied a petition for rehearing on November 8, 1973.

## ERRORS OF THE U. S. DISTRICT COURT

The U. S. District Court for the Middle District of Florida, Jacksonville Division, rendered a summary judgment in behalf of the shipowner on March 22, 1973, discussing the judgment in a "order and opinion" that should be reviewed in the history of this case. The District Court below either held or suggested the following:

(a) The injuries of the plaintiff were insignificant;

(b) The shipowners discharged their duty for "cure" to the seaman merely by paying for 15 days hospitalization at the Tampa General Hospital;

(c) The shipowner meets the test required by Garrett v. Moore McCormick Co., 317 U.S. 239 (1942) merely by establishing that the seaman was represented by a bona fide attorney at the time he signed the release;

(d) That representation by counsel is coincidental and equal to adequate counseling;

(e) That merely the form, without regard of content, of taking depositions from two attorneys who represented the seaman, establishes satisfactorily to Rule 56 of the F.R.C.P. that no genuine issue of fact existed between the shipowner and the seaman.

(f) And in furtherance of mere form over content, it must be assumed that the U. S. Ambassador to Caracas, Venezuela, was a witness and gave approval to the satisfactory manner in which a release was obtained from the seaman, in spite of testimony of Mr. Victor Raymos;

(g) And lastly, the mere form of signing the release is above all, superior to the content of the release, in spite of the verbiage in the release, or the fact that it was written in English by a seaman who did not speak English.

## PROCEDURE BEFORE THE U. S. COURT OF APPEALS FOR THE FIFTH CIRCUIT

In the appeal from the United States District Court for the Middle District of Florida to the United States Court of Appeals for the Fifth Circuit, the seaman, Mauro Evaristo Blanco, through counsel, presented a brief to the appellate court, outlining a statement of the case, essentially as has herein been outlined to the United States Supreme Court. As indicated in the reply brief of Blanco to the United States Court of Appeals, the brief of

the shipowner made no quarrel with the outline of facts as given by the appellant, Blanco. In addition to the absence of quarrel with the facts as outlined by Blanco, the shipowner also had little quarrel with Blanco's exceptions to the seven points (a through g) concerning the order and opinion of the District Court below.

In the original brief of Blanco, the aforementioned points (a through g) were outlined as the holding or suggestions of the United States District Court below. It was suggested by Blanco to the appellate court that the absence of comment as to the errors as outlined by Blanco (a through g) represented that the shipowner conceded that the lower Court was in error on these points, as outlined by Blanco.

Instead of challenging the brief of the appellant, Blanco, before the United States Court of Appeals for the Fifth Circuit, instead of disputing any facts or disputing the appellant's seven-point (a through g) analysis of the District Court's judgment and order, the shipowner presented a brief to the United States Court of Appeals which merely re-urged more emphatically that "representation by counsel is coincidental and equal to adequate counseling" and that the "mere form of signing a release is above all, superior to the content of the release, in spite of the verbiage in the release and in spite of the fact that the release was worded in English, and signed by a seaman who did not speak English." The written opinion of Judges Wisdom, Ainsworth and Clark for August 20, 1973, for the United States Court of Appeals either held or indicated the following:

(a) The appellate court did not agree the plaintiff's injuries were insignificant;

(b) That even in 1968, in the course of settlement negotiations, there was still a problem of continuing cure as noted by the Fifth Circuit in that opinion:

"When settlement offer eventuated, Blanco's English-speaking attorney deposed:

I wrote Mr. Blanco in April of 1968 that I needed to get a statement from him as to how his injuries were currently bothering him, what sums he owed for doctors and medicines, the number of times he has been treated by a physician since the first of February.

I don't think I ever got any intelligent reply to that. Every letter I had was not responsive to it, but I believe about the time I associated Victor Ramos in the case and - I'm certain I did by October, 1968.

I see one letter that is translated by Mr. Ramos. It says, and this is from Blanco - 'as of this moment I have no report'."

(c) Obviously, the Fifth Circuit Court of Appeals did not feel that the shipowner met the test required by Garrett v. Moore McCormick Co., 317 U.S. 239 (1942), by virtue of their specific quote from the case:

. . . the burden is upon one who sets up a seaman's release to show that it was executed freely, without deception or coercion, and that it was made by

the seaman with a full understanding of his rights. The adequacy of the consideration and the nature of the medical and legal advice available to the seaman at the time of signing the release are relevant to an appraisal of this understanding.

This circuit has paraphrased the Garret test in this language:

. . . the burden is on the party setting up the seaman's release to show that it was given by the seaman with an informed understanding of his rights and a full appreciation of the consequences of his release.

Cates v. United States, 451 F. 2d 411, 414 (1971).

(d) A review of the last three paragraphs of the opinion of the Fifth Circuit Court of Appeals would bear evidence that this appellate court was satisfied there was at least an issue of fact as to whether or not Blanco received adequate counseling prior to signing a release.

(e) Consider the quotes from the deposition as specifically quoted by Blanco to the Court of Appeals and also consider those excerpts from the deposition that the Court of Appeals, itself, quoted, it is submitted that the appellate court felt that the depositions of the two attorneys, who previously represented the seaman, did not establish satisfactorily to Rule 56 of the Federal Rules of Civil Procedure that a genuine issue of fact existed between the shipowner and the seaman;

(f) It is obvious that the Fifth Circuit Court of Appeals, like counsel for Blanco, cannot concur that the U. S. Ambassador to Caracas, Venezuela, was a witness and/or gave approval to any alleged satisfactory manner in which a release was obtained from Blanco;

(g) And lastly, the release, itself, written in English and signed by a seaman who did not speak English, at the very least presented a question of fact to be tried before the jury pursuant to Rule 38 of the F. R. C. P.

REASONS FOR DENYING THE WRIT AND/OR FOR AFFIRMING THE DECISION OF THE APPELLATE COURT BELOW

The shipowner, in its reasons for granting a writ, has made the following comments:

(1) If representation by two competent counsel is not enough, indeed what must it take?

(2) The test of Garrett v. Moore McCormick Co., 317 U.S. 239 (1942) is not achieving the impossible . . . the reason for the rule, set forth in Garrett was never to be interpreted, so as to make good faith, fair-handed negotiations impossible;

(3) Must a vessel owner require to be included in the direct communications between the seaman's attorney and the client's seaman?

(4) The decision of the Fifth Circuit leads to confusion, misinterpretation, lack of uniformity and more litigation by seamen;

(5) The decision of the United States Court of Appeals for the Fifth Circuit is in conflict with the case relied upon by the District Judge herein.

(6) It is predicted that this decision of the Fifth Circuit will cause a lack of uniformity in case law, as well as confusion concerning the validity of release;

(7) There is a dispute raised by the shipowner as to whether or not interrogatories propounded to the shipowner were filed and served.

(8) The shipowner urges this Court to reject the traditional idea of "words of the admiralty" and to "modernize the law" in this vital area of admiralty.

(1)

If representation by two competent counsel is not enough, indeed what must it take?

In the depositions of the two attorneys, as well as in the "Order and Opinion" of the District Court below, there is a conspicuous absence of any discussion, revelation or suggestion as to what type, if any, counseling was afforded Blanco by either the lawyer who did not speak Spanish or the Spanish-speaking lawyer, who recommended the seaman accept $1,000.00 to settle all claims. Counseling of a client necessarily goes beyond merely recommending a settlement. A phonograph record can do that. In the instant case, there were outstanding claims in behalf of the seaman pertaining to maintenance, cure, transportation, earned wages, unearned wages, damages

via negligence and/or damages via unseaworthiness. There is a total absence of any discussion by the Court below or the deposed lawyers concerning these aspects of counseling. The judgment of the Fifth Circuit Court of Appeals recognizes this:

As Courts frequently do, the U. S. District Court below, probably without reading the deposition submitted by the shipowner, assumed the contentions of the shipowner merely because the shipowner took and produced the depositions. However, any superficial reading of the deposition on the contrary proves that the deposition taken by the shipowner does not establish the thesis of the shipowner. The shipowner did not meet the test required by Garrett v. Moore McCormick Co., supra. A superficial reading of these two depositions of the two members of the Bar does not bear out this burden. In fact, the depositions reveal the following:

(a) The seaman was conversant with Spanish, but not English;

(b) Mr. Bostwick was conversant with English, but not Spanish;

(c) In September or October of 1967, Mr. Bostwick received an offer of $1,000.00 from the shipowners and/or their insurers and thereafter for approximately one year, in spite of language barriers, he attempted to coerce and persuade the seaman to accept this offer;

(d) After one year, in September or October of 1968, Mr. Bostwick, for his convenience, associated Mr. Victor Raymos, who never met or spoke to the seaman in person, but instead corresponded with him by letter and

> then only to persuade the seaman to accept the offer of $1,000.00.

Contrary to the opinion of the District Court below, there is an absence of evidence in the record to indicate that either attorney was experienced and/or conversant in handling personal injury claims and more particularly, admiralty personal injury claims.

(2)

> The test of Garrett v. Moore McCormick Co., 317 U. S. 239 (1942) is not achieving the impossible . . . the reason for the rule, set forth in Garret was never to be interpreted, so as to make good faith, fair-handed negotiations impossible.

In proceeding before the Fifth Circuit Court of Appeals, the shipowner heretofore urged strongly that the United States Ambassador to Caracas, Venezuela was a witness and gave approval to the satisfactory manner in which a release was obtained from the seaman. Apparently, the briefs of the seaman and the opinion of the Fifth Circuit Court of Appeals have convinced the shipowner of the error of their ways, inasmuch that before this United States Supreme Court, this argument has apparently been considerably de-emphasized. But, since the District Court below placed emphasis on the allegation that the U. S. Ambassador was a "witness and gave approval to the satisfactory manner in which the release was obtained from the seaman", and since this argument was heretofore urged to the appellate court below, it is submitted that the U. S. Supreme Court should also review this aspect of the case.

Perhaps the greatest error of the District Court below is contained in its reference to the United States Ambassador to Venezuela, especially on Page 3 of the "Order and Opinion", when the Court reports:

> "Mr. Raymos deposed that the release was executed in the presence of the United States Ambassador to Venezuela, witnesses, a notary public, an interpreter and Mr. Blanco's own interpreter. This was not controverted by any of the affidavits submitted by the plaintiff."

Pages 11 and 12 of the depositions of Mr. Victor Raymos, the attorney associated by Mr. Bostwick, do not verify that the United States Ambassador to Caracas was a witness to the execution of this release. A review of the release, itself, indicates a conspicious absence of the Ambassador's name and there is no testimony in the record, whatsoever, that verifies that the United States Ambassador was in any wise a witness to the release. On the contrary, reference to the United States Ambassador by Mr. Victor Raymos does not bear out that the seaman had a full understanding of the release when he was signing. On the contrary, in spite of the Court's opinion, the testimony of Mr. Victor Raymos pertaining to the United States Ambassador reveals:

> "So we sent these things to the ambassador, the American ambassador in Caracas, and then I received an answer back from the ambassador saying that Mr. Blanco had visited the embassy this morning, <u>but he was not clear however that Mr. Blanco fully understands the significance of the release of all rights, although they were explained to him in Spanish</u>."

This is the only reference of testimony in the Court record to the ambassador and thus, contrary to the opinion of the District Court below, the ambassador of the United States of America for Venezuela did not bear witness, as reported by the District Court.

In this respect, it is submitted that this clear-cut error by the United States District Court warranted the appellate court to find that the test of Garrett v Moore McCormick Co., 317 U. S. 239 (1942) was not met.

(3)

Must a vessel owner require to be included in the direct communications between the seaman's attorney and the client's seaman?

This is a defense or peudo-defense that the shipowner has not heretofore raised. But now that it is raised, the seaman, Blanco, must submit to the Court that the claim of the seaman was obviously more complicated and more involved than reported by either Mr. Bostwick or Mr. Raymos. Obviously, Mr. Bostwick was unable to counsel his client at all. Coming to Mr. Raymos, his counseling was confined and restricted to merely a recommendation of settlement, coupled with the arrangements that Blanco should make to protect the shipowner with a release. There is no indication in either attorney's deposition that they counseled Blanco on any of the following:

(a) His rights under the Jones Act;

(b) His rights under general maritime law, including the warranty of seaworthiness, concerning the explosion;

(c) The company's obligation under general maritime law to afford Blanco maintenance, transportation and cure, notwithstanding any damage claim he may have;

(d) His right to claim earned wages in any Court, in any country, pursuant to general maritime law and his right under the American law for penalty wages;

(e) His right to make claim for unearned wages;

(f) The fact that his claim for cure itself would exceed the $1,000.00 offer made thereto;

(g) That his probable claim for maintenance was in excess of the $1,000.00 offer;

(h) That his probable claim for earned wages and/or unearned wages was in excess of the $1,000.00 offer;

(i) That his claim for damages was in excess of the $1,000.00 offer.

And while Mr. Victor Raymos may have been of the opinion that the injuries of facial scarring, temporary, partial and/or permanent blinding were mild, non-serious injuries, the shipowner, itself, must have known and/or as a matter of law should have known that these injuries, as damages or as unearned wages, or as maintenance or as cure, were more than $1,000.00 being offered.

(4)

The decision of the Fifth Circuit leads to confusion, misinterpretation, lack of uniformity and more litigation by seamen.

Garrett v. Moore McCormack, Inc., supra, does not lead to confusion, misinterpretation, lack of uniformity and/or more litigation by seamen. Since 1942, it merely presents a rule which is sometimes followed to protect seamen who are at an economical, intellectual and educational disadvantage when attempting to negotiate with a shipowner.

(5)

The decision of the United States Court of Appeals for the Fifth Circuit is in conflict with the case relied upon by the District Judge herein.

There was obviously a language barrier involved in the instant case, which automatically made this case not a proper candidate for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. While the order and opinion of the District Court below, as well as the briefs of the shipowner, are conspicuous by their silence concerning the language barrier, this particular problem of the language barrier in this particular case stands out. Unlike the District Court, the appellate court below took particular notice of this language barrier. Moreover, while the Judge from the District Court below had not talked to Mauro Evaristo Blanco, the ambassador of the United States to Caracas, Venezuela, did and according to the shipowner witness, Mr. Raymos, did make a report concerning the lack

of understanding of Blanco concerning the release, even though the same was delivered to him in Spanish. Apparently, the District Court below, like the two attorneys, Mr. Bostwick and Mr. Raymos, did not read the release. The release, itself, should be read. It is a standard Red Ink Release used by shipowners and P & I insurers. It is the same type of Red Ink Release referred to in Thompson v. Coastal Oil Co., 119 F. Supp. 838 (DC NJ 1954), rev'd on other grounds, 221 F. 2d 559 (CA 3), aff'd. 350 U. S. 956, 76 S. Ct. 345, vacated on rehearing on other grounds, 350 U. S. 985, 76 S. Ct. 471, rev'd on other grounds, 352 U. S. 862, 77 S. Ct. 90. Seamen who can read and write English have difficulty with the release. To quote the bottom of Page 9, in the deposition of Mr. Bostwick:

> "It was a complicated release form."

By its terms, the release should not have been used for a Spanish-speaking seaman. At the top of the release, it is plainly imprinted:

> "READ CAREFULLY - BY SIGNING THIS YOU GIVE UP EVERY RIGHT YOU HAVE."

This phrase is in English, but Blanco could not read English.

Going to the middle of the release, the printed part reads:

> "READ THE FOLLOWING SIX NUMBERED STATEMENTS CAREFULLY."

Blanco could not read the six numbered statements. This release form should not have been used for this foreign seaman. At

the very least, the release should have been written in Spanish.

By its own terms, this release printed in English offers an issue of fact. In English, the following is printed:

"THE FOLLOWING IS TO BE FILLED IN BY THE CLAIMANT HIMSELF IN HIS OWN HANDWRITING.

A. Have you read this paper from beginning to end? A. _____

B. Do you know what this paper is that you are signing? A. _____

C. What is this paper which you are signing? A. _____
(Write here 'release of everything')

D. Do you make the six numbered statements printed above and do you intend that the parties who you are releasing shall rely on the statements as the truth?
A. _____

E. Do you know that the signing of this paper settles and ends EVERY right or claim you have for DAMAGES as well as for past and future maintenance, cure and wages? A. _____

F. In order to show that you know what you are doing, please copy in your own handwriting, in the space immediately following, the third numbered statement above which is printed in red ink.

_____"

This type of release was not printed for a foreign seaman. Blanco could not read the same from the beginning to end. The document, itself, cannot represent verification that Blanco knew what paper he was signing.

In the extremely poor copy of the release in the Court record, observed by counsel prior to preparing this brief, the written part, completing the blanks in the release, are "illegible". Moreover, reviewing these handwritten parts as best as the same can be reviewed, it appears that there is more than one type of handwriting in the course of completing the face side of the release.

(6)

It is predicted that this decision of the Fifth Circuit will cause a lack of uniformity in case law, as well as confusion concerning the validity of releases.

The seaman, Blanco, submits the shipowner's attack upon Garrett v. Moore McCormack Co., Inc., supra, is unwarranted.

(7)

There is a dispute raised by the shipowner as to whether or not interrogatories propounded to the shipowner were filed and served.

The (B) part of the Petition for Writ of Certiorari as filed by the shipowner is an innovation, for which counsel for Blanco engaged for this appellate procedure is unable to answer, having no copy of the record

present. Relying upon memory it is the undersigned counsel's best recollection that there were interrogatories filed in the record, which were propounded to the shipowner.

(8)

> The shipowner urges this Court to reject the traditional idea of "wards of the admiralty" and to "modernize the law" in this vital area of admiralty.

The (C) part of the Petition for Writ of Certiorari, as urged by the shipowner, is purely argumentative. On the contrary side, the politically weak, like Blanco, other laborers, mechanics, farmers, longshoremen and seamen can contrary-wise argue that they are in no wise equal in bargaining positions with any insurance company or any shipowner or any stevedore, to bargain for rights and benefits under the law, or under a contract. They need help and aid in some shape or form. The "ward of the admiralty" theory which is sometimes followed by courts is an equitable theory. It is true laborers, sharecroppers, miners, and other politically weak persons quite frequently as a matter of common law, do not enjoy any protection of the law when they have been over-reached. But, is that to say we should follow the lower standard, so as to make all persons "equal"? Perhaps, the contrary is true and all Courts at all times should protect all parties to guard against any being over-reached.

## CONCLUSION

The United States Court of Appeals reviewed, analyzed and evaluated the facts and issues at hand more so than the District Court below. There was no misinterpretation of Garrett, supra, by this appellate court.

It is urged that this United States Supreme Court either deny the petition for writ of certiorari or instead affirm the decision and judgment of the United States Court of Appeals for the Fifth Circuit, vacating the judgment of the district court below and remanding this case back to the District Court below for a trial on the merits.

Respectfully submitted,

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CHARLES R. MALONEY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to Mr. James F. Mosely, c/o Messrs. Toole, Taylor, Mosley, Gabel & Milton, Suite 1014 Barnett Bank Building, Jacksonville, Florida 32202, mailed this 7th day of March, 1974.

CHARLES R. MALONEY